

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS:
AUSTIN DIVISION

m/027/007

In re:

JUMBO MINING COMPANY,

Debtor.

CASE NO. 97-14326 FM
CHAPTER 7

NOTICE OF APPEARANCE AND REQUEST FOR SERVICE

PLEASE TAKE NOTICE that the Nevada Division of Environmental Protection (NDEP), party in interest in this case, hereby gives notice of the appearance of its counsel in this case:

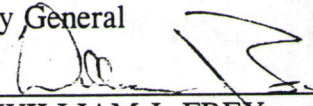
William J. Frey, Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (702) 687-7321
Fax: (702) 687-5798

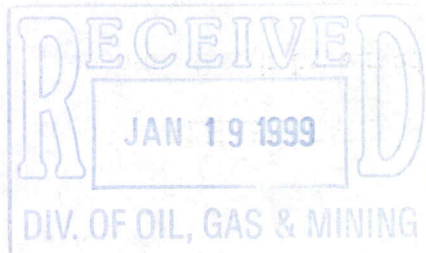
PLEASE TAKE FURTHER NOTICE that NDEP requests, through its undersigned counsel, that it be served with copies of all notices, pleadings, motions, orders and other papers pertaining to any issue in the case or hearing thereon.

DATED this 19 day of October, 1998.

FRANKIE SUE DEL PAPA
Attorney General

By:


WILLIAM J. FREY
Deputy Attorney General
Nevada State Bar No. 4266
100 N. Carson Street
Carson City, Nevada 89701-4717
(702) 687-7321
Attorneys for Party in Interest Nevada
Division of Environmental Protection



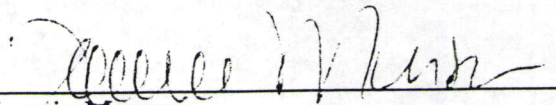
CERTIFICATE OF MAILING

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 2nd day of October, 1998, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of the foregoing Notice of Appearance and Request for Service, addressed as follows:

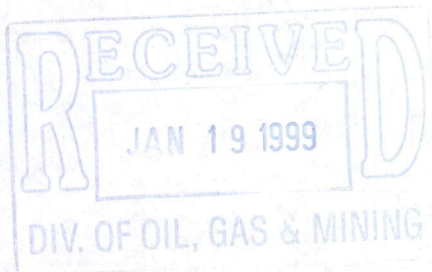
James V. Hoeffner, Esq.
515 Congress Avenue, Suite 2600
Austin, Texas 78701

C. Daniel Roberts, Trustee
707 Rio Grande, 2nd Floor
Austin, Texas 78701

U.S. Trustee
903 San Jacinto Boulevard, Suite 230
Austin, Texas 78701


Laurie Munson

LM:c:\files\bf\jumbo\appear.not



U/021/007

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS:
AUSTIN DIVISION**

In re:

JUMBO MINING COMPANY,

Debtor.

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)

CASE NO. 97-14326 FM
CHAPTER 7

CERTIFICATE OF MAILING

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 15th day of January, 1999, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of a Notice of Appearance and Request for Service, addressed to the individuals on the attached mailing list.


Laurie Munson

LM:c:\files\bf\jumbo\certmail.doc



DIV. OF OIL, GAS

MAILING LIST

Amerigas Richfield
Acct No: 3031
P.O. Box 338
Richfield, Utah 84701-0338

Bureau of Land Management
AZ State Office/Mining Branch
P.O. Box 555
Phoenix, AZ 85001-0555

Commercial Business Radio
700 North Highway 6, #6
Delta, UT 84624

E.B. and Janet King
6305 Fern Spring Cove
Austin, TX 78730

Holland & Hart, LLP
555 Seventeenth Street, Suite 3200
P.O. Box 8749
Denver, CO 80201-8749

Mizpah Mining Company
P.O. Box 336
Delta, UT 84264

Sierra Airgas
Acct No. R7236
P.O. Box 19255
Sacramento, CA 95819

Texas Commerce Bank
700 Lavaca
Austin, TX 78701

Asoma (Utah), Inc.
c/o C. Daniel Roberts, Trustee
415 Westlake Place
1515 Capital of Texas Hwy. So.
Austin, TX 78746

Bureau of Land Management
P.O. Box 12000
Reno, NV 89520

Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

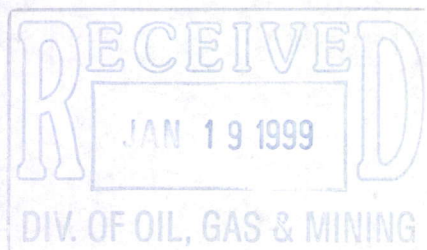
Bureau of Land Management
Utah State Office
324 So. State Street, Suite 301
Salt Lake City, UT 84111

IBEX Gold Mining Trust
Attn: P. Robert Knight
12454 E. Brickyard Rd. #530
Salt Lake City, UT 84106

NORCO
Acct No. N1034
P.O. Box 15299
Boise, ID 82715

State of Utah Lands Admin.
3 Triad Center, Suite 400
335 West North Temple
Salt Lake City, UT 84180-1204

Mr. Rupp, PE
Utah Dept. of Environ.
P.O. Box 144870
Salt Lake City, UT 84114-4870



James Carter
Utah Div. of Mining
1594 West North Temple #1210
Salt Lake City, UT 84114-5801

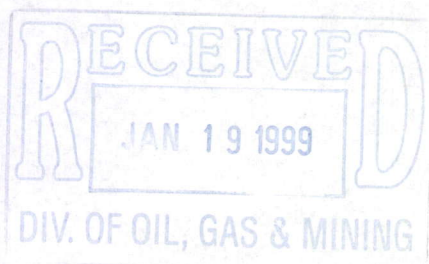
Western States Minerals Corp.
c/o Haddon, Morgan & Foreman PC
150 East 10th Avenue
Denver, CO 80203

Workforce Services
Acct No. 7-139058-0-000
P.O. Box 45266
Salt Lake City, UT 84145-0266

Western States Minerals Corp.
4975 Van Gordon Street
Wheatridge, CO 80033

Whitmore Oxygen Co.
Acct No. 731040
P.O. Box 25477
Salt Lake City, UT 84125

Z. Lance Samay
P.O. Box 130
Morristown, NJ 07963



ONLY Sunnyside Bankruptcy file
cc Patrick O'Hara
Don Magorm
done

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)	Case No. 94-12794 CEM
)	
SUNNYSIDE COAL COMPANY,)	Chapter 7
)	
Debtor.)	
)	
)	
)	
_____)	

**AMENDED NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 202 OF
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN TRUSTEE
OF SUNNYSIDE COAL COMPANY AND FABIAN & CLENDENIN**

TO ALL PARTIES IN INTEREST:

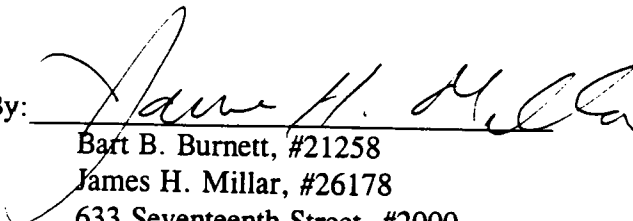
Notice is hereby given that Kenneth A. Rushton ("Trustee"), Chapter 7 Trustee for Sunnyside Coal Company, has filed a Motion in this Court for approval of a Settlement Agreement resolving a dispute which concerns Fabian & Clendenin. The Settlement Agreement provides that Fabian & Clendenin shall waive and withdraw its Chapter 11 administrative expense in return for a release from the Trustee. Copies of the Motion and Settlement Agreement are attached hereto for your review.

Pursuant to Rule 202 of the Local Rules of Bankruptcy Procedure, if you desire to oppose the Motion, you must file a written objection and request for hearing with the Court on or before Friday, February 12, 1999, and serve a copy thereof on the undersigned attorney. Objections and requests for hearing shall clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the Court.

In the absence of a timely and substantiated objection and request for hearing by an interested party, the Court may approve or grant the Motion without any further notice to creditors or other interested parties.

Dated this 20th day of January, 1999.

LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.

By: 
Bart B. Burnett, #21258
James H. Millar, #26178
633 Seventeenth Street, #2000
Denver, Colorado 80202
Telephone (303) 291-2600

and

Steven J. McCardell (Utah Bar No. 2144)
Penrod W. Keith (Utah Bar No. 4860)
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101
Telephone No: (801) 320-6700

Counsel for Kenneth A. Rushton
Chapter 7 Trustee

FILED
BRADFORD L. BOLTON
CLERK
JUN 16 1995

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)	Case No: 94-12794-CEM
)	
SUNNYSIDE COAL COMPANY,)	Chapter 7
)	
Debtor.)	
)	
)	
)	

**MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN TRUSTEE
OF SUNNYSIDE COAL COMPANY AND FABIAN & CLENDENIN**

Kenneth A. Rushton ("Trustee"), Chapter 7 Trustee for Sunnyside Coal Company ("Debtor" or "Sunnyside"), pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019, moves for entry of an Order approving the compromise of a dispute and settlement agreement among the Trustee and Fabian & Clendenin, and states as follows:

BACKGROUND

This case was filed by the Debtor as a voluntary Chapter 11 case on March 25, 1994 (the "Petition Date"). This Court, on June 23, 1995, entered its Order converting the above-captioned case from Chapter 11 to Chapter 7. On June 26, 1995, Mr. Rushton was appointed as interim trustee and has since become the Trustee in this case.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND FACTS

Until approximately March 25, 1994, Sunnyside operated a coal mine located near Sunnyside, Utah. During the course of the Chapter 11 case, Fabian & Clendenin rendered services for and on behalf of the Debtor and was allowed, after application was made, an administrative claim in the Chapter 11 case in the approximate amount of \$56,000 (the "Administrative Claim"). The Trustee, in analyzing preferential transfers, alleged that Fabian & Clendenin may have received a preferential transfer in the amount of \$61,875.47.

FACTS RELATED TO SETTLEMENT AGREEMENT

The parties have determined that there exists terms and conditions upon which this matter can be settled. Those terms and conditions are set forth fully in the Settlement Agreement ("Settlement Agreement"), attached hereto as Exhibit A.

In order to avoid the time, expense and uncertainties of litigation and to settle the dispute between them, the Trustee and Fabian & Clendenin have entered into the Settlement Agreement and file this motion seeking approval of the Settlement Agreement. The parties have negotiated and entered into the Settlement Agreement in good faith.

The Trustee, using his business judgment, has determined that approval of the Settlement Agreement is in the best interests of the estate. The estate will not incur the substantial costs and expenses which will otherwise be incurred in resolving this matter against Fabian & Clendenin through litigation. The Trustee, subject to authorization by this Court, has all requisite power and authority to enter into, execute, and deliver the Settlement Agreement.

THE SETTLEMENT

Reference should be made to the Settlement Agreement for a review of all the terms of the Settlement Agreement. In summary, Fabian & Clendenin agrees to waive and withdraw its Administrative Claim in return for a release from the Trustee.

LEGAL AUTHORITY FOR SETTLEMENT

Before approving a settlement agreement, the Court must determine whether the proposed settlement is fair and equitable, and in the best interests of the estate. Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.), 105 B.R. 971, 976 (D. Colo. 1989). In making this determination, the Court should consider the probable success of litigation on the merits, the complexity and expense of litigation, and the interest of creditors in deference to their reasonable views. Id. at 977.

The Court is not required, however, to conduct a mini-trial to decide the questions of law or fact raised by the settlement. In re Carson, 82 B.R. 847, 853 (Bankr. S.D. Ohio 1987). The decision to approve a compromise is within the Court's discretion. In re Blue Coal Corp., 47 B.R. 758 (Bankr. N.D. Pa. 1985).

As set forth herein and based upon all of the foregoing reasons, the Trustee believes the Settlement Agreement is in the best interests of creditors, the estate and all other parties in interest and should be approved.

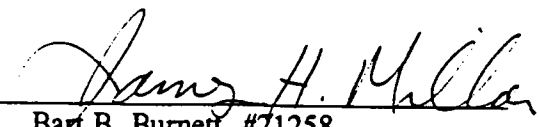
WHEREFORE, the Trustee respectfully requests that the Court enter an Order approving the Motion and the Settlement Agreement as a compromise of a dispute under 11 U.S.C. §105 and Fed. R. Bankr. P. 9019 and approving the execution of any other documents necessary to the consummation of the Settlement Agreement. The Trustee further requests that

the Court enter an Order ruling that this Court shall retain jurisdiction over all disputes concerning the interpretation and enforcement of the Settlement Agreement.

Dated this 16th day of December, 1998.

LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.

By:


Bart B. Burnett, #21258

James H. Millar, #26178

633 Seventeenth Street, #2000

Denver, Colorado 80202

Telephone (303) 291-2600

and

Steven J. McCardell (Utah Bar No. 2144)

Penrod W. Keith (Utah Bar No. 4860)

1000 Kearns Building

136 South Main Street

Salt Lake City, Utah 84101

Telephone No: (801) 320-6700

Counsel for Kenneth A. Rushton

Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN TRUSTEE OF SUNNYSIDE COAL COMPANY AND FABIAN & CLENDENIN was served this 16th day of December, 1998, by depositing same in the United States mails, first class, postage prepaid, addressed to the following:

Douglas J. Payne
FABIAN & CLENDENIN
215 South State, #1200
Salt Lake City, Utah 84111

U.S. Trustee
721 - 19th Street #408
Denver, CO 80202

Shawn Holdorf

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is dated October __, 1998, and is made between Kenneth A. Rushton (the "Trustee"), Chapter 7 Trustee of Sunnyside Coal Company, Bankruptcy Case No. 94-12794 CEM in the United States Bankruptcy Court for the District of Colorado ("Sunnyside" or the "Debtor"), on behalf of Sunnyside's estate, and Fabian & Clendenin, a professional corporation. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings ascribed to them in section 1 hereof.

RECITALS

WHEREAS, in March 1994, Sunnyside filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court"); and

WHEREAS, in June 1995, the Bankruptcy Court converted the case to a case under Chapter 7 and appointed Mr. Rushton as Chapter 7 Trustee; and

WHEREAS, during the course of the Chapter 11 case, Fabian & Clendenin rendered services for and on behalf of the Debtor and was allowed, after application was made, an administrative claim in the chapter 11 case in the approximate amount of \$56,000 (the "Administrative Claim"); and

WHEREAS, the Trustee in analyzing preferential transfers has alleged that Fabian & Clendenin may have received a preferential transfer in the amount of \$61,875.47 ; and

WHEREAS, the parties, in an attempt to avoid the substantial costs and risks inherent in further appeals and to resolve all remaining disputes between them, have reached settlement of all remaining disputed matters among them and have reduced the terms of the settlement to writing in this Agreement; and

EXHIBIT

A

WHEREAS, the consideration and approval of this Agreement constitute a core proceeding under 28 U.S.C. §157;

AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants, agreements, terms, obligations, and conditions contained herein, IT IS AGREED as follows:

1. Definitions. As used in this Agreement or internally in the definitions hereinafter set forth, the following defined terms shall have the following meanings:

"Approval Order" shall mean the order of the Bankruptcy Court approving this Agreement. A proposed form of the Approval Order is attached hereto as Exhibit A.

"Business Day" shall mean any day except a Saturday, Sunday, or legal holiday as defined in Bankruptcy Rule 9006(a).

"Closing Date" shall mean the first Business Day after all of the following have taken place: (i) the parties have executed and delivered this Agreement, and (ii) the Approval Order provided for in paragraph 3(a) of this Agreement has become a Final Order.

"Final Order" shall mean a judgment, order, or other decree issued or approved by the Bankruptcy Court which has been entered and as to which the appeals period has run, which judgment, order, or other decree has not been reversed or stayed pending appeal.

2. Terms of Settlement. Trustee shall waive and release Fabian & Clendenin from all claims he may have against Fabian & Clendenin, including any claim or right to pursue an avoidance action. In consideration of this release, Fabian & Clendenin agrees to release any all claims that it has against the estate or the Trustee including the Administrative Claim which

has been allowed during the chapter 11 case. The Trustee will forthwith submit a motion requesting approval of this Agreement.

3. Conditions Precedent to Binding Effect of Agreement. Each of the parties agrees to use its best efforts to consummate the provisions of this Agreement, including submission of evidence and argument to the Bankruptcy Court if necessary, to obtain the Approval Order and including best efforts to obtain in the Approval Order a finding that this Agreement has been entered into in good faith by the parties and is otherwise appropriate under any applicable law. Except as provided in the foregoing sentence, this Agreement shall not bind the parties and shall not be effective until the following condition has been satisfied:

(a) Bankruptcy Court Approval Order. The Bankruptcy Court shall have entered the Approval Order in substantially the form agreed to by the parties and the Approval Order shall have become a Final Order. The Approval Order shall contain all of the provisions required for purposes of implementing the provisions of this Agreement, including without limitation approval of the Releases referred to below and any other documents necessary to carry out the Agreement. The Approval Order shall be entered only after notice to parties in interest.

4. Releases. After obtaining the Final Order approving this Settlement Agreement, the release of the Trustee of any and claims against Fabian & Clendenin and the release of Fabian & Clendenin of the Sunnyside estate and the Trustee shall become immediately effective. No further release documents other than the Final Order approving this Settlement Agreement shall be required to effectuate mutual release contemplated hereby.

5. Representations and Warranties of the Trustee. The Trustee represents and warrants, as of the date this Agreement is executed and as of the Closing Date, that:

(a) He has all requisite power and authority to execute and deliver this Agreement, to effectuate the release of Fabian & Clendenin contemplated herein, and to make any other documents necessary to consummate this Agreement and perform his obligations hereunder and thereunder, subject to obtaining approval thereof by the Bankruptcy Court in the Approval Order.

(b) The execution, delivery, and performance by the Trustee of this Agreement and any other documents necessary to consummate this Agreement require no, and will not require any, action by or in respect of, or filing with, any governmental body, agency, or official, except as provided herein or therein, in order for such agreements or instruments to be valid and enforceable, and do not now and will not contravene or constitute a default under any provision of any applicable law or regulation.

6. Representations and Warranties of Fabian & Clendenin. Fabian & Clendenin represents and warrants, as of the date this Agreement is executed and as of the Closing Date, the following:

(a) That it is a professional corporation organized under the laws of the State of Utah and that it is in good standing; that it has all requisite power and authority to execute and deliver this Agreement, to effectuate the release of the Sunnyside bankruptcy estate and the Trustee and to execute and any other documents necessary to consummate this Agreement and perform its obligations hereunder and thereunder.

(b) The execution, delivery, and performance by Fabian & Clendenin of this Agreement and any other documents necessary to consummate this Agreement require no further authorization or resolution of Fabian & Clendenin or its principals other than the execution of this document, and that Fabian & Clendenin has not transferred any rights it has

with respect to any claim, including the Administrative Claim, against the Sunnyside bankruptcy estate.

(c) When executed and delivered and approved in the Approval Order, this Settlement Agreement and any other documents necessary to consummate this Agreement, constitutes a valid and binding agreement or instrument of Fabian & Clendenin enforceable in accordance with its terms.

7. Termination.

(a) This Agreement shall automatically terminate and be of no further force and effect, and the parties hereto shall thereupon be released from all obligations hereunder (except that the provisions of paragraph 6(c) shall survive such termination), if any one or more of the following events occurs:

- (i) if for any reason the Motion for entry of the Approval Order is denied or an order is entered, which has become a Final Order, that precludes the execution and delivery of this Agreement by the Trustee; or
- (ii) if for any reason the Approval Order is not entered; or
- (iii) if for any reason the Approval Order is entered, has become a Final Order, and contains provisions materially inconsistent with this Agreement or is entered without containing all of the provisions required as a condition to the effectiveness of this Agreement;

(b) This Agreement may also be terminated at the sole option of the injured party by written notice effective upon transmittal in accordance with paragraph 9(a) and this Agreement shall thereupon be of no further force and effect, and the parties hereto shall

thereupon be released from all obligations hereunder (except that the provisions of paragraph 6(c) shall survive such termination), as follows:

(i) by the Trustee, if Fabian & Clendenin shall fail to perform any of their material obligations hereunder, including without limitation, the execution of all documents necessary for the consummation of this Agreement, or if Fabian & Clendenin's representations and warranties set forth in paragraph 5 hereof are untrue in any material respect as of the date the Approval Order becomes a Final Order, or as otherwise specified therein; or

(ii) by Fabian & Clendenin, if the Trustee shall fail to perform any of his material obligations hereunder, including without limitation, the execution of all documents necessary for the consummation of this Agreement or if the Trustee's representations and warranties set forth in paragraph 4 hereof are untrue in any material respect as of the date the Approval Order becomes a Final Order, or as otherwise specified therein.

(c) In the event of termination of this Agreement pursuant to paragraphs 6(a) or 6(b), the parties hereto acknowledge and agree that this Agreement, and all negotiations and proceedings connected with this Agreement, shall be without prejudice to the rights or remedies of the parties hereto, and no part of this Agreement, or any statement by any party, any finding of fact or any conclusions of law related thereto may be used in any manner by any party hereto in any action, suit, or proceeding as evidence of the respective rights, liabilities, duties, or obligations of the parties. The parties further acknowledge and agree that all undertakings and agreements contained in this Agreement have been agreed to solely for the purpose of effectuating a voluntary settlement of the claims and disputes between the parties

and shall not be deemed to constitute an admission or concession by any of them for any purpose, nor shall such undertakings and agreements or this Agreement itself be deemed to constitute a waiver of any legal position or any theories or defenses that any of the parties hereto might assert in any context.

8. Miscellaneous.

(a) Notices. All notices, requests, and other communications to either party hereunder shall be in writing, and delivered by certified mail, return receipt requested, by Federal Express, or by facsimile, and shall be given to such party at the following addresses:

If to the Trustee:

Kenneth A. Rushton
99 West Main Street, #202
P.O. Box 212
Lehi, Utah 84043

With a copy to:

Kenneth L. Cannon II
LeBoeuf, Lamb, Greene &
MacRae, L.L.P.
136 South Main Street, #1000
Salt Lake City, UT 84101

If to the Fabian & Clendenin:

Douglas J. Payne
Fabian & Clendenin
215 South State
#1200
Salt Lake City, Utah 84111

(b) Benefit of Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(c) Entire Agreement and Amendment. This Agreement together with exhibits hereto, constitutes the entire agreement agreed to by the parties hereto relating to the subject matter hereof, and may not be amended, altered, or modified, except by a writing executed by a duly authorized representative of each of the parties hereto. Any material modification shall be subject to the approval of the Bankruptcy Court. This Agreement shall

in no event be construed or deemed to be evidence of any admission on the part of any party of any liability or wrongdoing.

(d) Headings. The headings herein are inserted for convenience of reference only and shall not affect the construction or interpretation hereof.

(e) Counterparts and Multiple Originals. This Agreement may be executed in any number of counterparts, and/or originals, each of which shall be an original, with the same effect as if the signatures thereto and hereto were on the same instrument.

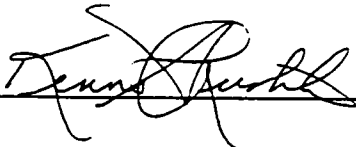
(f) Governing Law. This Agreement shall be governed by and construed in accordance with Utah law, except to the extent that federal law governs this Agreement.

(g) Enforcement. In the event litigation or other proceedings are commenced to enforce any of the provisions of this Agreement or any other documents executed in conjunction with this Agreement, the prevailing party shall be entitled to receive all costs and expenses, including reasonable attorneys' fees, of such litigation or proceedings, as fixed by the court.


(h) Parties to Bear Own Costs. As part of this Agreement, each of the parties shall pay its own cost and attorneys' fees arising from the proceedings described herein, and each party hereto waives and releases the other parties from whatever claims the one might have against the other for such costs and attorneys' fees.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of each of the parties hereto on the day and year first above written.

KENNETH A. RUSHTON,
Chapter 7 Trustee of Sunnyside

By: 

FABIAN & CLENDENIN

By: 
Its: authorized agent